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May 8, 2014

VIA HAND DELIVERY AND ELECTRONIC FILING

Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57
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Dear Ms. Dortch:

Pursuant to the Joint Protective Order in this proceeding,[1] Comcast Corporation and Time Warner Cable Inc. hereby submit the enclosed *ex parte* notice and redacted presentation by Dr. Mark Israel containing Confidential Information. The [[ ]] symbols denote where Confidential Information has been redacted. The notice and Confidential version of the presentation have been filed under separate cover and will be made available for inspection pursuant to the terms of the Joint Protective Order.

Please contact the undersigned should you have any questions regarding this matter.

Respectfully submitted,

Michael D. Hurwitz
Counsel for Comcast Corporation

Enclosures

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[1] *In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-57, Joint Protective Order, DA 14-463 (Apr. 4, 2014) ("Joint Protective Order").

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May 8, 2014

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***In the Matter of Applications of Comcast Corp. and Time Warner Cable Inc. for Consent to Transfer Control of Licenses and Authorizations,***
MB Docket No. 14-57

Dear Ms. Dortch:

On May 6, 2014, the following individuals and I met with the Commission staff named in the attached "List of Commission Attendees" (Attachment 1) in connection with the pending applications of Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("TWC") (together, "Applicants"):

- Drs. Mark Israel, David Weiskopf, Bryan Keating, and Nauman Ilias of Compass Lexecon;
- Lynn Charytan of Comcast, Art Burke of Davis Polk & Wardwell LLP, and Michael Hurwitz of Willkie Farr & Gallagher LLP, counsel to Comcast; and
- Steven Teplitz and Terri Natoli of TWC and Matt Brill of Latham & Watkins LLP, counsel to TWC.

Dr. Israel presented the slide deck attached here (Attachment 2), which summarizes his declaration appended to the Public Interest Statement filed by Applicants on April 8, 2014.[1]

Dr. Israel emphasized that his analysis of the combined company's bargaining incentives and ability vis-à-vis edge providers applies equally to both edge providers and their transit agents (e.g., CDNs).

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[1] Application and Public Interest Statement of Comcast Corporation and Time Warner Cable Inc., MB Docket No. 14-57, Exhibit 6, Declaration of Dr. Mark A. Israel (Apr. 8, 2014).

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Dr. Israel also discussed how his conclusion that ISPs would suffer competitively if they were to block or degrade edge provider content, which would disincentivize such conduct, could be squared with the view that net neutrality rules are necessary because ISPs *may* engage in such conduct. Dr. Israel did not suggest that there could *never* be incentives to block or degrade edge provider content. Rather, his key points were that (i) in order to undertake such a strategy, an ISP would need to conclude that the benefits of attempting to block or degrade edge provider content would outweigh the costs; and (ii) especially in the context of peering and backbone interconnection, such a conclusion would be highly unlikely due to the questionable benefits and the substantial costs associated with such a strategy. The benefits would be elusive, in part because the strategy would be difficult (if not impossible) to implement effectively: As Dr. Israel explained, there are multiple routes to ISP networks, and edge providers (and CDNs) can use these alternatives to circumvent efforts to block or degrade a particular connection or route. Moreover, the costs of such a strategy would be enormous, because its effectiveness would rest on blocking or degrading routes that aggregate large amounts of content (not just the "target" content), and potentially blocking *many* such routes, thereby substantially degrading the overall performance of the ISP. The cost/benefit analysis is thus different from the "last mile" context addressed by the Open Internet Order, but any concerns there are addressed by Comcast's commitment to the Open Internet rules, and any rules the Commission adopts going forward.

Dr. Israel and the Comcast representatives also distinguished the dynamics of the MVPD marketplace from those of the Internet ecosystem. The roles of ISPs and MVPDs are not analogous in how content providers can reach end users. For example, direct negotiations and affiliation agreements between each MVPD and each content provider, size-based discounts, and programming blackouts (when parties occasionally fail to reach agreement) do not necessarily have a corollary in terms of the relationship between edge providers and ISPs. Dr. Israel further noted that, to the extent Applicants project moderate cost-savings from the combination of their traditional programming affiliation agreements, those savings are anticipated to be a function of the mechanics of their contracts and not a function of increased bargaining power of the combined company.

In response to questions about the scale benefits of Comcast and TWC combining to pursue national business account customers, Dr. Ilias noted that the companies have been trying to develop a business plan for several years and have been pursuing business jointly for about six months, and yet only very recently signed their first national account.[2]

In response to questions about the comparative pricing of TWC and Comcast broadband tiers (including TWC's planned upgrades), the TWC representatives noted that TWC had announced plans to upgrade customers' speeds over a three-year period; those plans, however, did not state anything specifically about future pricing for broadband service tiers (either on a standalone basis or in bundled offerings). TWC recently announced that customers in certain specific local markets are eligible to receive speed increases at no additional cost (with required upgrades to DOCSIS 3.0 modems). The

[2] *See also id.* ¶ 152.

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TWC representatives further noted that it is difficult to make apples-to-apples comparisons of TWC's and Comcast's broadband pricing today in light of differences in the speeds offered and the various bundled options, and that uncertainty regarding future pricing compounds the complexity of such comparisons.

Please direct any questions regarding this matter to the undersigned.

Respectfully Submitted,

/s/ Kathryn A. Zachem

Senior Vice President,
Regulatory and State Legislative Affairs
Comcast Corporation

cc: Commission Attendees

Attachment 1

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List of Commission Attendees

Elizabeth Andrion
Jim Bird
Ty Bream
Tim Brennan
Hillary Burchuk
Robert Cannon
Adam Copeland
Hillary DeNigro
Bill Dever
Marcia Glauberman
Paul Lafontaine
Bill Lake
Jonathan Levy
Elizabeth McIntyre
Ginny Metallo
Omar Nayeem
Jeffrey Neumann
Joel Rabinovitz
Eric Ralph
Jake Riehm
Bill Rogerson
Jonathan Sallet
Christopher Sova
Tom Spavins
Phil Verveer
Matt Warner
Sarah Whitesell
Andrew Wise

Attachment 2

Comcast/Time Warner Cable: Implications for Broadband Competition

COMPASS LEXECON™

May 6, 2014

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Outline of Presentation

- Section II of Declaration: Competitive Effects in Broadband
  - Economic framework for discussion of bargaining
  - Marketplace characteristics
- Sections III/IV of Declaration: Broadband Benefits
- Key Conclusions
- Q&A

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Competitive effects in broadband?

- No overlap in residential broadband customers
  - No overlap in footprints; national shares not relevant to residential broadband competition; no competitive effects
- No overlap in business customers
  - Comcast and TWC almost exclusively serve their own footprints; no competitive effects
- Business customers spanning TWC and Comcast footprint
  - Today Comcast and TWC provide complementary services to such businesses (if served at all).
  - Merger of complementary businesses is pro-competitive.
- Concerns regarding edge providers are the main focus of my analysis
  - Economic analysis of the characteristics of the Internet marketplace demonstrates lack of basis for such concerns.

Economic framework (1): Limited interaction between edge providers and broadband providers

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- My discussion focuses on interconnection agreements through which edge providers gain access to a broadband provider's subscribers.
- Vast majority of edge providers have no direct negotiations or agreements with Comcast, TWC, or any other broadband provider.
  - Those edge providers that do not negotiate directly with broadband providers work with intermediaries, like CDNs and transit providers to get their content to broadband provider's subscribers.
- When efficient, edge providers (generally large ones) may skip the middleman and negotiate directly with broadband providers.
  - Direct interconnection is always voluntary.
  - Other paths remain open and are often used redundantly even with direct connections.

Economic Framework (2): Lack of horizontal overlap eliminates standard antitrust concerns

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- The fact that the customer sets are distinct means that negotiations with Comcast and TWC are not negotiations over substitute opportunities.
  - Put differently, negotiations involving Comcast and negotiations involving TWC affect distinct antitrust markets.
  - Hence, standard antitrust concerns regarding mergers of firms providing substitute products/services do not apply.
- Absent standard horizontal substitution issues, those seeking to criticize the transaction are likely to focus on the effects of the combined firm's size on bargaining power and outcomes.
  - However, unlike cases with horizontal substitution, economics provides no basis to conclude that greater size increases bargaining power.
  - And, unlike standard monopoly or monopsony concerns, shifts in bargaining power (in either direction) need not lead to any reduction in consumer welfare.
  - Next two slides develop these points in more detail.

Economic Framework (3): No clear linkage between size and bargaining power

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- Unlike cases of horizontal substitution, economic principles yield no accepted, systematic relationship between size (created via a merger that *does not* combine substitute products) and bargaining power.
- For example, considering a merger of buyers (to simplify discussion), commonly-used models turn on technical details regarding shape of seller surplus functions, with higher prices due to merger of buyers only if seller surplus functions are "concave" (*i.e.*, if per-customer benefit to a supplier of reaching more customers decreases with the number of customers the supplier can access).
- In present context, no basis to conclude that edge provider/CDN surplus functions are generally concave and thus no basis to say that the transaction will increase bargaining power of the combined firm.
- Paper in MVPD context (Chipty and Snyder, 1999) finds convex surplus function and thus concludes that merger of non-overlapping MVPDs would tend to *decrease* MVPD bargaining power vis-à-vis content providers. *One implication is that any observed relationship between size (in the absence of overlap) and content prices does not represent enhanced bargaining power.*

Economic Framework (4): Shifts in bargaining power need not reduce consumer welfare

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- Even if bargaining power shifts in one direction or the other post-transaction, there are no clear welfare harms.
  - Unlike standard monopoly or monopsony models, shifts in bargaining power may simply shift surplus between parties, with no reduction in output and no welfare harms.
  - Recall that, in Comcast-NBCUniversal, claims of consumer harms from shifts in bargaining power turned on increase in per-sub, per-month affiliate fees and associated pass-through. No such per-sub, per-month pricing issues are applicable here.

Marketplace Characteristics (1): Lack of credible threat to block/degrade edge providers

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- The details of the environment in which broadband providers and edge providers (or their agents) negotiate matter in answering one key question: Can broadband providers (even large ones) credibly threaten to block or degrade edge provider access to their network?
  - This is the threat that would underlie any ability to increase price or otherwise change terms to providers/CDNs.
- ***As I explain in subsequent slides, this threat is not credible post-transaction and broadband providers are not properly thought of as "terminating access monopolies."***

Marketplace Characteristics (2): Edge provider services drive broadband demand

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- Content, apps, and services from edge providers drive demand for services from broadband providers.
- Any strategy to harm edge providers would directly reduce demand for a broadband provider's services.
- Key points here:
  1. Broadband service comprises an important part of both Comcast's and TWC's businesses (e.g., residential broadband accounted for approximately 25 percent of Comcast revenue, and 32 percent of TWC revenue, in 2013). And given lack of programming costs, broadband is an even larger contributor to Comcast's and TWC's profitability.
  2. To the extent cable providers have broadband speed advantages, they want to support providers who make maximum use of such speeds.
  3. Likely that absence of (or limitations on) particular edge providers would be more important to consumers than speed differences.
  4. Value comes not just from a few large edge providers but from the wide range of Internet options, including the steady stream of new providers/apps (the "ubiquity" value of the Internet).

Marketplace Characteristics (3): Nature of interconnection makes strategy to harm edge providers untenable

- An attempt to limit a particular edge provider's access to combined firm network would require a substantial reduction in Internet connectivity and loss of access to substantial content.
- Vast majority of edge providers reach a broadband provider's subscribers through CDNs/peers.
  - To disadvantage the edge providers who work through CDNs/peers would require a provider to significantly degrade its broadband service.
- Vast majority of Internet transit and peering customers are "multi-homed" (*i.e.*, make use of multiple alternative paths onto the ISP's network).
  - Multiple access routes would be implicated in any attempt to harm such edge providers, increasing the harm to Comcast's broadband offering from such a strategy.
- Edge providers/CDNs choose the routes over which their traffic flows and have substantial control over the experience of a broadband provider's customers and thus its reputation and profitability.

Marketplace Characteristics (4): Broadband alternatives

- Combined firm will not be a broadband monopolist. Edge providers have other platforms, which already have a sizable share, on which to interact with end users.
- Although national broadband market share is not relevant for a competitive analysis of the proposed transaction, looking at national share data reveals one important fact: Post-transaction, edge providers will have access to many broadband customers nationally without going through Comcast or TWC.
- Combined, the parties account for less than 40 percent (after divestitures) of fixed broadband customers in the U.S. and less than 20 percent of combined fixed and mobile wireless broadband customers (based on latest FCC data and divestitures of 3 million subscribers).
- On the more relevant local basis, consumers generally have access to multiple broadband options (which are unaffected by merger).
  - *FCC IAS Report* indicates that approximately 97 percent of households are located in census tracts with 2+ *fixed* providers meeting broadband speeds.
  - *FCC IAS Report* indicates that approximately 97 percent of households are located in census tracts with 3+ *fixed or mobile* broadband providers meeting broadband speeds.

Marketplace Characteristics (5): Wired broadband alternatives

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- Specific alternative options:
  - Fiber-to-the-premises (FTTP): FiOS, Google, AT&T GigaPower, municipal fiber networks
  - Increasingly more advanced DSL:
    - Fiber-to-the-node (FTTN): Speeds up to 100 Mbps
    - Other advanced DSL services: Speeds up to 45 Mbps
    - Comcast anticipates that providers such as [[ ]] may be able to use new DSL technologies to achieve speeds as high as [[ ]] by the end of [[ ]].
    - In November 2012, AT&T announced plans to invest $6 billion over the next three years to expand and upgrade its wireline network. Recent announcements by AT&T's CEO indicate increased investment is occurring in direct response to the proposed transaction.

Marketplace Characteristics (6): Wireless broadband alternatives

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- Specific alternative options (cont.):
  - Wireless:
    - Near ubiquitous LTE access. Percentage of population with access to a mobile wireless provider offering downstream speed of at least 10 Mbps *increased from 7.9 percent in December 2010 to 97.3 percent in June 2013*.
    - Substantial downward pressure on wireless costs/prices, with more spectrum, greater spectral efficiency, etc. [[ ]] projects [[ ]] reduction in wireless cost per GB over coming years.
    - [[

      ]]
    - Due to projected declines in cost and price per GB of wireless data, wireless broadband will become an increasingly economical alternative to wireline broadband in coming years.

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Broadband Benefits (1): Economic logic behind benefits

- Put simply, the efficiencies derive from lessening the "balkanization" of cable providers. No economic basis to believe that such fragmentation is optimal in a scale-driven business.
- Benefits of scale: Combining the distinct regional footprints of two broadband providers will enable the combined firm to capture more revenue from any given investment, thereby incentivizing greater investment and generating substantial pro-competitive consumer benefits.
- Need for merger: Such scale-based benefits are difficult to obtain via partnerships or other collaborations, as conflicting incentives among partners may cause holdup problems, double marginalization, coordination difficulties and other transactions costs.

Broadband Benefits (2): Benefits to Business Customers

- Deeper penetration by cable operators into business services dominated by incumbent telcos is substantially pro-competitive.
- Transaction alleviates both the coordination and the double-marginalization problems in serving "super-regional" businesses.
  - Combining the companies' complementary footprints helps overcome coordination issues associated with current cross-footprint partnership efforts and makes it easier to bid for super-regional business.
  - The transaction eliminates double margins and replaces lower "out-of-footprint" margins with higher "in-footprint" margins, thereby incentivizing the firm to bid more aggressively for opportunities spanning the footprints of the two firms.
- Incentivizes incremental investments due to greater scale
- Combines complementary skills and facilities

Broadband Benefits (3): Benefits to Residential Customers

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- Specific mechanisms through which the transaction will benefit residential broadband customers (and thus edge providers via the virtuous circle):
  - Improved network standards and technology;
  - Improved wired network infrastructure;
  - Improved wireless access networks; and
  - Improved home networks.
- Network Standards and Technology:
  - Today Comcast customers enjoy faster broadband speeds on average than do TWC customers.
  - Comcast has already committed to accelerate TWC's network upgrade plans, including:
    - Upgrade all TWC systems to digital technology more quickly;
    - Facilitate optimal use of DOCSIS 3.0 in the combined footprint by making available more QAM channels for Internet service and deploying CCAP-enabled Cable Modem Termination Systems (CMTS); and
    - Deploy DOCSIS 3.1 in the near future.

Broadband Benefits (4): Benefits to Residential Customers

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- *Wired networks*: Customers will benefit from increased investment in access networks, and metro, regional, and national core networks.
  - Investments motivated by increased opportunities to serve business customers, cross-regional economies of scope in regional core networks, and economies of scale in investing in national core network
  - For example, incremental expansion of the combined firm's "plant" to serve more business customers will increase overall capacity of the combined firm's network, benefitting residential customers.
- *Wireless access networks*: Customers will benefit from a unified Wi-Fi strategy, including expanded and accelerated rollout of new generations of Wi-Fi gateways and a denser grid of Wi-Fi hotspots.
  - These expanded Wi-Fi offerings may facilitate entry into the mobile wireless industry at some point in the future.
- *Home networks*: Customers will benefit from increased investments in home network technologies made profitable by the combined firm's increased scale. TWC customers will also benefit from the faster rollout of Comcast's state-of-the-art routers and modems.

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Broadband Benefits (5): Virtuous Circle

- Improved broadband service will foster "virtuous circle" that benefits both residential broadband consumers and edge providers and stimulates competitive reactions that furthers these benefits.
- As the FCC has long noted, faster broadband speeds lead to an increase in edge service innovation, leading to more usage of the network, which attracts more edge providers and creates more incentives to improve broadband network speed and quality, and so on.
- Virtuous circle follows from standard economics of indirect network effects. Improvements in platform motivate investments by users on both sides of platform.
- Benefits are felt by users of all broadband providers:
  - Competitive response to improved Comcast/TWC network (as AT&T has already indicated it is doing).
  - Investments in improved edge services motivated by improved Comcast/TWC platform benefit subscribers of all broadband providers.

Key Conclusions

- Given (i) the lack of any valid competitive concerns and (ii) the substantial consumer benefits, the proposed transaction—as it relates to the provision of broadband services in particular—is pro-consumer, pro-competitive, and in the public interest.
  - The proposed transaction will not harm broadband competition.
    - The transaction leads to no horizontal competitive concerns for residential or business broadband customers.
    - The transaction leads to no competitive concerns based on changes in bargaining power vis-à-vis edge providers.
  - The increased scale created by combining the distinct regional footprints of two broadband providers will generate substantial pro-competitive consumer benefits.